

OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD
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NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **October 18, 2007**, at 10:00 a.m.
in the Auditorium of the State Resources Building
1416 Ninth Street, Sacramento, California 95814.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **October 18, 2007**, following the Public Meeting
in the Auditorium of the State Resources Building
1416 Ninth Street, Sacramento, California 95814.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **October 18, 2007**, following the Public Hearing
in the Auditorium of the State Resources Building
1416 Ninth Street, Sacramento, California 95814.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOHN D. MACLEOD, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **October 18, 2007**.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 2
Section 3228
Number of Exits

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 25
Section 3650
Industrial Trucks, General (Blue Signal Protection)

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 2
Section 3228
Number of Exits

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking proposal is the result of a Division of Occupational Safety and Health (Division) memorandum and Request for New, or Change in Existing, Safety Order dated April 24, 2007, and staff evaluation and comparison of Title 8 and Federal Occupational Safety and Health Administration (Federal OSHA) fire and life safety exit standards. Title 8 exit standards are contained in Section 3228 which requires at least one exit unless otherwise specified in Table E-1. Table E-1 provides employers with minimum egress and access requirements.

The federal OSHA exit standards are contained in 29 CFR 1910.36(b) and were promulgated on November 7, 2002, (FR No. 67:67949-67965), Exit Routes, Emergency Action Plans and Fire Prevention Plans; Final Rule. The federal standard applies to new and existing buildings. It states that at least two exit routes must be available in a workplace to permit prompt employee evacuation in the event of an emergency. These standards also address the need for more than two exits and permit a single exit route under certain circumstances.

This proposal would amend Section 3228 to include (1) language from 29 CFR 1910.36(b) that requires a minimum of two exits in the workplace, and (2) a reference to the Title 24, 2007 California Building Code, Part 2, Chapter 10, Section 1019, Number of Exits and Continuity. An exception is proposed which would allow a single workplace exit in situations where the employer demonstrates that having one exit is adequate based on occupancy, number of employees, size of the building or the arrangement of the workplace. The proposal deletes outdated Title 24 parenthetical references to building code sections that no longer apply to the current version of the California Building Code, Table E-1, and other portions of Section 3228 that are inconsistent with the provisions added by this proposal.

The California Building Standards Commission will adopt the new California Building Code which is based on the 2006 International Building Code (IBC) rather than the NFPA. Both require a minimum of two exits and both address situations where more than two exits are required.

Section 3228. Number of Exits.

This section contains requirements regarding the number of workplace exits, occupancy, number of stories, occupant load, workplaces where alternative means of egress are required, placement of exits, boiler, furnace and incinerator room exits, use of fixed ladders as an exit alternative, exits for parking garages, the method of computing occupant load, and exiting floors above the second story. This section also refers to Table E-1 which contains minimum egress and access requirements based on use, occupancy load, and square feet per occupant.

Amendments are proposed to delete all of the existing regulatory text in Section 3228 and replace it with new language. The new language in subsection (a) would require a minimum of two exits in the

workplace to allow prompt evacuation of employees during an emergency. The proposed language would underscore that two exits, rather than one exit, is the general minimum exit requirement. By making this change, Section 3228 will be made consistent with the equivalent federal standard.

An Exception is proposed which would permit a single workplace exit based on occupancy size, arrangement of the workplace, building size and number of employees and type of occupancy such that all employees would be able to safely evacuate during an emergency. The effect of the proposed Exception would inform the employer of the circumstances under which one exit is acceptable. Those circumstances are stated in the same manner as an equivalent federal provision.

New subsection (b) is proposed to require more than two exits in workplaces in accordance with the occupancy factors described in the proposed regulatory text in situations where safe evacuation of the workplace is not possible with two exits. The proposed amendment would inform the employer of the circumstances under which more than two exits are necessary in certain occupancy situations. The wording mirrors the federal standard.

An informative Note is proposed to apply to subsections (a) and (b) that directs the employer to consult the Title 24, 2007 California Building Code, Part 2, Chapter 10, Section 1019, Number of Exits and Continuity, as well as the local jurisdiction fire authority for guidance in determining the number of workplace exits and the necessary distance between them. The Note would ensure that Section 3228 is at least as effective as the equivalent federal standard which contains a similar note referencing the NFPA code for determining the appropriate number of required exits.

As to the portions of Section 3228 that are deleted, the effect of the deletions is to rid the standard of provisions that contradict the provisions added by this proposal or that are rendered superfluous in light of the provisions added in this proposal.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

This proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

This proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 25
Section 3650
Industrial Trucks, General (Blue Signal Protection)

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Section 3650, subsection (t) sets forth operating rules pertaining to industrial trucks and tow tractors. Section 3650(t)(23) concerns the loading and unloading of rail cars and provides in part that blue flags or lights are to be displayed in accordance with Public Utilities Commission (PUC) standards. However, there are no such PUC standards. This proposal would replace the reference to the nonexistent PUC standards with references to other appropriate standards. The proposal is necessary in order to give force and effect to the blue flag/blue light portion of Section 3650(t)(23).

This rulemaking is initiated in response to the action taken by the Occupational Safety and Health Standards Board (Board) on April 19, 2007, granting Petition File No. 489. The Petitioner, Ric Morrison of the Sunset Molding Company, requested that the blue flag/blue light provision found in the current version of Section 3650(t)(23) be amended to match industry practice. He stated that the absence of PUC blue flag/blue light standards creates a quandary for employers as to what they are required to do.

When railroad cars are loaded or unloaded, there is a danger that the cars will move and injure employees working in proximity to the cars. Section 3650(t)(23) contains provisions intended to ensure that the railroad cars remain stationary. The blue flags and blue lights indicate to rail workers that a car that has been immobilized is not to be coupled to other cars, equipment or locomotives, or otherwise disturbed in a way that would cause the car to move.

The Federal Railroad Administration, has promulgated rules regarding the use of blue lights and blue flags. Those rules, found at Title 49, Code Federal Regulations (CFR) Part 218, Subpart B, provide practical guidance to employers regarding blue flag/blue light use. Of those provisions, 49 CFR Section 218.27 is particularly relevant to the operations that are the subject of Section 3650(t)(23), such as loading and unloading on industrial sidings and industrial railway systems. Section 3333 of the General Industry Safety Orders (GISO) also pertains in part to blue flag/blue light use.

The proposal would delete the erroneous PUC reference from Section 3650(t)(23). In place of that reference, the proposal would add references to 49 CFR Section 218.27 and GISO Section 3333. The proposal would also incorporate 49 CFR Section 218.27 by reference into Section 3650(t)(23) and add the word “blue” before the word “light.” By making these changes, the proposal will make Section 3650(t)(23) more intelligible and give it substance that it presently lacks as a result of the nonexistence of the PUC provisions that it supposedly relies on.

DOCUMENTS INCORPORATED BY REFERENCE

1. Title 49, Code of Federal Regulations, Section 218.27

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. Copies of this document are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because this standard does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board’s Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than October 12, 2007. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on October 18, 2007, will not be considered by the Board unless the

Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOHN D. MACLEOD, Chairman